IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

MACA.No. 368 of 2006()

OP(MV).1208/1998 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

.....

APPELLANT/5TH RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.,
REPRESENTED BY IS ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT:

DR. PRIYA JOBY, W/O. JOBBY K.THOMAS,
KANATTU HOUSE, 26/1100, KOCHI-682 013.

BY ADV. SRI.C.K.ABDUL RAHIM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10/01/2007, ALONG WITH MACA 370/2006 ETC. THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.A.C.A. Nos. 368, 2121, 370 and 2122 of 2006

Dated: 10th January 2007

JUDGMENT

Krishnan,J.

M.F.A. No 2121 of 2006 is an appeal preferred by the claimant against the award in O.P. (M.V) No 1208 of 1998 of the Claims Tribunal, Ernakulam and M.A.C.A. No 368 of 2006 is an appeal filed by the Insurance Company against the very same award. M.A.C.A. No 2122 of 2006 is an appeal preferred by the claimant against the award in O.P.(M.V) No 1209 of 1998 and M.A.C.A. No 370 of 2006 is an appeal preferred by the Insurance Company against the very same award.

2. Claimants in these cases are husband and wife and while they were travelling in a car they met with a road accident whereby they sustained injuries. Wife is a dentist by profession and the

husband is an architect working abroad. In O.P. No 1208 of 1998 dentist, namely the claimant therein sustained fracture of the shaft of the right femur and contusion in neck. She was admitted in the Kovai Medical Centre and Hospital on 23.5.1997 and was inpatient there till 28.5.1997 for fixation of her femur. Thereafter she got discharged and had undergone treatment in Vathakkat Orthopaedic Hospital during different span. She had delayed union of fracture. She was inpatient for the period from 1.6.1998 to 11.6.1998 and was advised to take rest and to undergo physiotherapy for different periods and according to her she rejoined duty only on 27.11.1998. Doctor has assessed the percentage of permanent disability at 8%. Tribunal has taken the monthly income as Rs 4,000/-, disability at 5% and awarded compensation for disability and loss of earning for six months at Rs 43,200/- and Rs 24,000/- respectively. In the appeals filed by the Insurance Company they challenged the finding of the Tribunal in awarding the sum of Rs 1,62,918/- as against the claim of Rs 1,64,000/-. So far as the income is concerned claimant is a dentist working in a dental clinic and she had been paid Rs 5,000/- as salary. We find there need not be any dispute about the fact that she was working as dentist in a clinic. So we fix the

income at Rs 5,000/- So far as the actual loss of earning is concerned, the Tribunal has awarded six months' income. A perusal of the treatment records which is precisely extracted in paragraph 7 of the award would show that she had undergone treatment at different passages of time and she had been advised to take rest. Enquiry revealed that she had undergone physiotherapy, again she was admitted in the hospital and there is malunion of fracture. Taking into consideration the totality of the entire materials, factum of malunion of fracture and also the nature and period of treatment undergone by her we feel at least she would not have been in a position to work as dentist for one year with malunited fracture. We therefore fix the monthly income at Rs 5,000/- and so she is entitled to compensation of Rs 60,000/- under that head. Tribunal has awarded only Rs 24,000/-. We award additional compensation of Rs 34,000/-. Tribunal has fixed the disability at 5% though the certificate shows the disability at 8%. Considering the fact that the disability fixed by the Tribunal is at 5% and taking the monthly income at Rs 5,000/- the amount of compensation to which the claimant is entitled to would be Rs 54,000/- instead of Rs 43,200/-. Therefore claimant in O.P.(M.V) No 1208 of 1998 is entitled to

additional compensation of Rs 44,800/-. In O.P. No 1208 of 1998 though the claim is for Rs 1,64,000/- a higher amount is granted taking note of the actual loss of earning. It is settled position as per the decision of the apex court that the court can award the amount for the actual loss that is sustained by the claimant on account of the injuries in the accident.

3. The next question to be considered is whether the claimant in O.P. (M.V) No 1209 of 1998 is entitled to enhanced compensation. Claimant was an architect working abroad earning monthly salary of 6,500 dirhams. He had sustained injuries on the face besides hairline fracture - L4 vertebra on the left side and spondylolisthesis of L5 over S1 vertebra grade I. He was advised to continue lumbosacral belt for a month. Ext.A19 is the certificate issued by Physiotherapy Specialist who assessed the disability at 5%. Counsel would contend that the Tribunal has not taken note of the disability at the rate of 5% for the loss of earning. It is clear that the accident had taken place with a collision of lorry and on account of the injury sustained in the accident he was not able to go for work for a period of one or two months. Therefore taking into consideration the period of absence that would have been on

account of the injuries Tribunal has awarded him compensation of Rs 39,000/- for loss of earning. There are no precise materials to show that when he had rejoined in service. Taking note of the injury sustained in the accident we feel nothing wrong in granting the amount as awarded by the Tribunal towards loss of earning. So far as disability compensation is concerned, learned counsel would contend that it should have been 5%. After the accident he had gone back and rejoined duty and he continues to work as architect and so there is no actual loss of income. The fact that he had sustained hairline fracture, L4 vertebra and spondylolisthesis at the early age of 29 would warrant compensation and therefore the Tribunal had awarded for loss of earning power Rs 50,000/-. Tribunal has considered all the materials available and awarded just compensation under that head. Therefore no further amount need be granted under that head. Therefore the appeals filed by the Insurance Company as also the appeal filed by the husband, MACA 2122 of 2006, are dismissed. In MACA No 2121 of 2006 an additional compensation of Rs 44,800/- with 7% interest on the said sum from the date of petition till the date of payment is granted to the appellant and the Insurance Company is directed to deposit the

amount within two weeks from the date of a copy of this judgment.

SD/-

(K.S. RADHAKRISHNAN, JUDGE)

SD/-

(M.N. KRISHNAN, JUDGE)

10/01/2007
en/

[true copy]

Order on I.A.472 of 2006 in
M.A.C.A. No 368 of 2006 and
I.A.475 of 2006 in
M.A.C.A. No 370 of 2006

Dismissed.

Id./- K.S.Radhakrishnan,Judge
Id./- M.N.Krishnan,Judge

10/01/2007

[true copy]